

U.S. v. Manafort

2280

1 UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF VIRGINIA
 ALEXANDRIA DIVISION

3 -----x
 4 UNITED STATES OF AMERICA, :
 : Criminal Action No.
 : 1:18-CR-83
 5 versus :
 :
 6 PAUL J. MANAFORT, JR., :
 : August 13, 2018
 7 Defendant. : Volume X - P.M.-2
 8 -----x

9 TRANSCRIPT OF JURY TRIAL
 10 BEFORE THE HONORABLE T.S. ELLIS, III
 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 FOR THE GOVERNMENT: UZO ASONYE, AUSA
 13 United States Attorney's Office
 2100 Jamieson Avenue
 Alexandria, VA 22314
 and
 14 GREG ANDRES, SAUSA
 BRANDON LANG VAN GRACK, SAUSA
 15 Special Counsel's Office
 U.S. Department of Justice
 16 950 Pennsylvania Avenue NW
 Washington, D.C. 20530

17 FOR THE DEFENDANT: JAY ROHIT NANAVATI, ESQ.
 18 BRIAN KETCHAM, ESQ.
 Kostelanetz & Fink LLP
 19 601 New Jersey Avenue NW
 Suite 620
 20 Washington, DC 20001
 and
 21 THOMAS E. ZEHNLE, ESQ.
 Law Office of Thomas E. Zehnle
 22 601 New Jersey Avenue NW
 Suite 620
 23 Washington, DC 20001
 and
 24

25

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

Appearances continued:

KEVIN DOWNING, ESQ.
Law Office of Kevin Downing
601 New Jersey Avenue NW
Suite 620
Washington, DC 20001
and
RICHARD WILLIAM WESTLING, ESQ.
Epstein, Becker, & Green, PC
1227 25th Street NW
Washington, DC 20037

OFFICIAL COURT REPORTER:

TONIA M. HARRIS, RPR
U.S. District Court, Ninth Floor
401 Courthouse Square
Alexandria, VA 22314

U.S. v. Manafort

2282

TABLE OF CONTENTS
TRIAL
WITNESSES

On behalf of the Government:

Paula Liss

Direct examination by Mr. Asonye..... 2293

MISCELLANY

Preliminary matters..... 2283

Certificate of Court Reporter..... 2301

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

P R O C E E D I N G S

(Continued P.M. session continued at 4:22 p.m.)

THE COURT: When we recessed, I think the defendant represented that he intended to argue only that in certain years -- I've forgotten which ones -- the foreign bank accounts belonged to an entity in which he owned 50 percent or less ownership. That's all you intended to argue; is that correct?

MR. ZEHNL: That's correct, Your Honor.

THE COURT: Now, given that, how does that implicate what you want to do?

MR. ASOYE: Your Honor, I think during the discussions with defense counsel, what they have said is they're going to argue that these were -- these offshore Cypriot accounts were DMP Internationals accounts, not Mr. Manafort's. And that, in our view, blows the door wide open because the implication is it's DMP International's filing requirement.

Now, they've conceded they are not going to come out and openly say, therefore, it was DMP International's filing requirement. But by saying they're DMP Internationals accounts, which is what they did through Mr. Gates, what they did through the stipulation, and what they are going to argue to the jury, you're right there, Judge.

THE COURT: Well, I was thinking during the recess

—U.S. v. Manafort—

2284

1 that if I do this, I'm going to tell the jury they cannot
2 convict Mr. Manafort for any offense not alleged in the
3 indictment. That's right, isn't it?

4 MR. ASONYE: That is correct, Your Honor, limiting
5 instruction --

6 THE COURT: So, necessary. And that they may only
7 consider the evidence relating to the failure of DMP
8 International and Davis Manafort Partners not filing as it
9 might relate to what? His intent? His willfulness?

10 MR. ASONYE: Yes, Your Honor.

11 THE COURT: All right. Now, that's a question I
12 asked you and you began to answer, but you never completed it,
13 there was too much discussion. The burden of the Government
14 is to show willfulness beyond a reasonable doubt.

15 How does the failure of these companies to file FBAR
16 reports operate to show that it's more likely so than not the
17 standard for relevance, that he knew that he had an obligation
18 and he deliberately violated it?

19 MR. ASONYE: It shows the second part, Your Honor,
20 that he didn't --

21 THE COURT: What does it show?

22 MR. ASONYE: It shows the second part of Your
23 Honor's question, which was that he didn't file for these
24 entities. The --

25 THE COURT: How does it show the willfulness,

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

1 though?

2 MR. ASONYE: Well, the -- that's not what it's
3 going -- the willfulness piece is the e-mails, an engagement
4 letters that I --

5 THE COURT: Do they relate to the entities?

6 MR. ASONYE: Yes, they spell out the FBAR
7 requirement, period.

8 THE COURT: Well, those are admitted.

9 MR. ASONYE: Those are admitted already, Your Honor.

10 THE COURT: And you can argue those. So how does
11 showing that these organizations didn't file if they're not
12 going to argue that it was their obligation, they're merely
13 going to argue that he didn't have an obligation personally
14 because that's what's alleged in the indictment?

15 MR. ASONYE: Your Honor, they are essentially
16 arguing that the corporation had the obligation by saying
17 these were the corporation's accounts.

18 THE COURT: All right. But you didn't indict the
19 corporation.

20 MR. ASONYE: Correct. But in the course of this
21 trial, they have now opened the door on the corporation issue.

22 THE COURT: I don't buy the open-door argument, but
23 I see your other point.

24 Do you have any objections -- does the Government
25 have any objection to my telling the jury that, of course, the

—U.S. v. Manafort—

2286

1 jury may not convict -- is something happening back there?

2 MR. ASONYE: No, Your Honor.

3 THE COURT: -- tell the jury that they may not
4 convict defendant for any offense not alleged in the
5 indictment. And it is not alleged in the indictment that
6 these companies failed to file. Therefore, the evidence that
7 the companies didn't file may only be considered by the jury
8 in their consideration of whether the Government has proved
9 beyond a reasonable doubt that Mr. Manafort, on his personal
10 obligation to file, did so or failed to do so willfully
11 deliberately.

12 MR. ASONYE: That would be appropriate and
13 necessary, Your Honor.

14 THE COURT: And, therefore, if I give that
15 instruction, Mr. Zehnle, you-all can argue as you wish.

16 MR. ZEHNLE: May I have a moment to confer, Your
17 Honor?

18 THE COURT: Yes, you may.

19 (A pause in the proceedings.)

20 MR. ZEHNLE: Thank you, Your Honor. So after
21 conferring with my colleagues, I want to go back to at least
22 initially what I've said, that these are two separate filing
23 obligations, one for the corporation and one for the
24 individual.

25 And the defense position is it doesn't make much

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

1 sense to let evidence, with respect to this filing obligation
2 with respect to these corporate or partnership entities, come
3 in and then later have to basically correct it with the
4 instruction and say, well, you can't consider it for anything
5 else other than this, as opposed to saying that's not
6 relevant, there's been no evidence of what the corporate
7 filing obligation is.

8 THE COURT: Well, no, I would be saying it is
9 relevant to the intent issue, to the willfulness issue. That
10 would be the basis for the admissibility.

11 MR. ZEHNL: The non-filing on behalf -- if I may,
12 Your Honor, the non-filing of an FBAR on behalf of the company
13 cannot be relevant, it seems, or probative of whether or not
14 Mr. Manafort as an individual had an obligation, because the
15 corporation might have other people that are responsible for
16 it or whatever.

17 Putting aside, you know, we're just focused on what
18 they've charged.

19 THE COURT: I understand. And I'm in agreement with
20 you in that regard, but Mr. Asonye, although he hasn't done it
21 with specifics, tells me that there are exhibits in the record
22 sent by accountants -- is that right, Mr. Asonye -- in which
23 the defendant in the case of DMP International and Davis
24 Manafort was advised of the duty, not his duty, but of the
25 duty of these corporations to file FBAR reports, and that is

U.S. v. Manafort

2288

1 relevant to his knowledge.

2 Is that right, Mr. Asonye?

3 MR. ASONYE: Your Honor, and I want to be --

4 THE COURT: Is that right?

5 MR. ASONYE: It is. But I want to be entirely clear
6 that in -- when the tax preparers are communicating with
7 Mr. Manafort about whether he has any foreign bank accounts,
8 determining whether he has an FBAR obligation, they quote the
9 entire regulation, and that's -- our argument is that that
10 makes clear --

11 THE COURT: Oh, so this isn't documents about --
12 this isn't where they're talking to him about what the
13 obligation is of these companies?

14 MR. ASONYE: Well, I --

15 THE COURT: See, I thought what you were saying is
16 that in connection with the companies, that he was given this
17 information and the companies failed to file, and I was going
18 to say that it was admissible because it goes to his intent.
19 And, of course, the jury can't convict him for failing -- or
20 the companies for failing to file because the company is not
21 indicted.

22 MR. ASONYE: Your Honor, if I could just read the
23 language for you and I'll be entirely --

24 THE COURT: I don't have any doubt that the language
25 says that, but you're telling me that it was sent to him in

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

1 connection with his individual obligation.

2 MR. ASONYE: No, it's sent to him on the engagement
3 letter. I'm looking at 153 with respect to his corporate
4 entities that are preparing his corporate returns, and they
5 cite foreign related reporting requirements. There are
6 several different reporting requirements: FBAR, an entity
7 subject to U.S. jurisdiction having a financial interest or
8 signature authority over bank accounts has to file.

9 So our argument is he was advised.

10 THE COURT: Was that sent to him in connection with
11 the return, his personal return, right?

12 MR. ASONYE: Actually, it's sent with an --
13 connection with his business --

14 THE COURT: So that's in evidence and you can argue
15 that to his knowledge.

16 MR. ASONYE: It's with his business returns as well,
17 Your Honor. His business returns are listed on -- Davis
18 Manafort Partners Inc. is listed on the list of the tax
19 returns that are being prepared in connection with this
20 engagement letter.

21 THE COURT: All right. Anything else, Mr. Zehnle?

22 MR. ZEHNLE: No, Your Honor.

23 THE COURT: And this witness is here?

24 MR. ASONYE: Yes, Your Honor.

25 THE COURT: If I decide to allow her to testify?

—U.S. v. Manafort—

2290

1 MR. ASONYE: She is, Your Honor.

2 THE COURT: More than three questions?

3 MR. ASONYE: I believe it's three questions.

4 THE COURT: All right. I'll take a brief recess to
5 reflect on it, but it won't be long. Ten minutes.

6 (Recess.)

7 THE COURT: All right. As I made clear --
8 Mr. Manafort is now present in the courtroom.

9 As I made clear, this is not -- to the extent that
10 it is a request for reconsideration of the earlier ruling,
11 that's denied.

12 But I'm going to permit this witness to be asked
13 these three questions, but I'm going to instruct the jury that
14 the jury, of course, may not convict Mr. Manafort for any
15 offense not charged in the indictment, and that the indictment
16 does not charge any of the entities, Davis Manafort Partners
17 and DMP International, with violating the FBAR requirement,
18 which it could, but it doesn't, and Mr. Manafort cannot be
19 convicted for the failure of those entities to file.

20 But they may consider the evidence that would be
21 presented for the limited purpose of helping them decide
22 whether Mr. Manafort had the requisite intent of willfulness,
23 which means that the jury must decide whether the Government
24 has proved beyond a reasonable doubt that Mr. Manafort knew
25 what the law required and deliberately did not comply with it.

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

—U.S. v. Manafort—

2291

1 That's what the jury will be told. And then you can
2 put your witness on, elicit your three questions and then you
3 may cross-examine.

4 That's the last witness for the Government?

5 MR. ANDRES: Thankfully, yes, Your Honor.

6 THE COURT: All right. I agree with thankfully.
7 And then we will hear Rule 29 motions. And following the
8 Rule 29 motions, Mr. Zehnle and Mr. -- I see Mr. Downing is
9 back with us.

10 MR. DOWNING: Good afternoon, Your Honor.

11 THE COURT: I will ask you whether the defendant
12 wishes to offer evidence.

13 If he does not, I will voir dire him if he does not
14 wish to testify.

15 All right. What that means for those of you in the
16 courtroom, it means that I will then ask Mr. Manafort
17 questions to ensure that he does not wish to testify, that he
18 wishes to exercise his right to remain silent.

19 All right. Is your witness here, Mr. Asonye?

20 MR. ASONYE: Yes, Your Honor.

21 THE COURT: All right. Let's be -- let's have the
22 jury return, please.

23 (Jury present.)

24 THE COURT: Again, I'm standing myself for the
25 comfort of my back. But just so you know, my back is

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

—U.S. v. Manafort—

2292

1 wonderful in the last two days. I have no problems with it.

2 All right. You may be seated.

3 Thank you for your patience. Ladies and gentlemen,
4 the bad news is we have one more witness. It's not really bad
5 news. It's what it is. The good news is that it will be a
6 short witness. That's not really good news either. We have
7 to hear all of the evidence and consider it carefully.

8 Now, the evidence you will hear must be considered
9 by you only for a limited purpose. The evidence you will hear
10 relates to Davis Manafort Partners and DMP International, two
11 entities that you've heard some other evidence about.

12 And you will hear from a witness about the entities
13 and whether they filed FBARs, FBAR reports. That evidence is
14 to be considered by you for a very limited purpose and I'll
15 describe that.

16 Mr. Manafort is not on trial for any crime or
17 offense not alleged in the indictment and you may convict only
18 for crimes alleged in the indictment. This evidence doesn't
19 relate directly to that, but you may consider this evidence in
20 determining whether the Government has proved beyond a
21 reasonable doubt that the Government has shown that
22 Mr. Manafort willfully failed to file FBAR reports that he had
23 an obligation to file. That's the purpose and the sole
24 purpose for which you may consider this evidence.

25 The evidence is not to be -- you can't convict

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

U.S. v. Manafort

P. Liss - Direct

2293

1 Mr. Manafort for offenses not alleged, and the indictment does
2 not allege that DMP International and Davis Manafort Partners
3 did not file FBARs. Companies can be accused of crimes. It's
4 not alleged in this indictment. So I'm going to permit the
5 one further witness and Mr. Asonye has said it'll be very
6 brief.

7 MR. ASONYE: Very brief, Your Honor.

8 THE COURT: All right. You may call the witness.

9 MR. ASONYE: The Government calls Paula Liss.

10 THE COURT: All right.

11 MR. ASONYE: Recalls.

12 THE COURT: Ms. Liss, come forward. You'll recall
13 you remain under oath and you may resume the stand.

14 All right. Mr. Asonye, you may proceed.
15 (Witness was previously sworn.)

16 **DIRECT EXAMINATION**

17 BY MR. ASONYE:

18 Q. Ms. Liss, could you remind the jury where you work and
19 your title?

20 A. I work for the Financial Crimes Enforcement Network,
21 commonly known as FinCEN. I'm a senior Special Agent.

22 Q. And did you testify earlier in this case that you
23 conducted searches in the FinCEN database to determine whether
24 certain entities filed FBARs in certain years?

25 A. Yes, I did.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

U.S. v. Manafort

P. Liss - Direct

2294

1 Q. Did you search the FBAR database to determine whether in
2 tax years 2011, 2012, 2013, and 2014, whether any FBARs were
3 filed for Davis Manafort Partners Inc. and DMP International
4 LLC?

5 A. Yes.

6 Q. And were there any FBARs filed for those entities in 2011
7 through 2014?

8 A. No, there were no records in FinCEN's database.

9 MR. ASONYE: No further questions, Your Honor.

10 THE COURT: That was five, but --

11 (Laughter.)

12 THE COURT: Yes, Mr. Zehnle.

13 MR. ZEHNLE: No questions, Your Honor.

14 THE COURT: You may step down.

15 (Witness excused.)

16 THE COURT: All right. Call your next witness.

17 MR. ANDRES: Your Honor, the Government rests.

18 THE COURT: All right. At this point, ladies and
19 gentlemen, I have some matters to deal with. So what I'm
20 going to do, it's five o'clock, I'm going to release you for
21 today. We will commence tomorrow morning at 9:30 as usual.
22 You may pass your books to the right. Mr. Flood will collect
23 them, maintain their security.

24 Remember, now when you get home, I suppose much of
25 the curiosity will have subsided, indeed, perhaps disappeared.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

—U.S. v. Manafort—

2295

1 But if it raises itself, resist the temptation. Do not
2 discuss the case with anyone. Don't look at any television or
3 papers or anything.

4 I had a very pleasant weekend. I didn't read a
5 single newspaper. I didn't look at a single TV show.

6 (Laughter.)

7 THE COURT: And I enjoyed it. Do that. Put it out
8 of your mind. I'll see you tomorrow morning at 9:30. Thank
9 you for your efforts today.

10 (Jury dismissed.)

11 THE COURT: All right. You may be seated.

12 Now, Mr. Downing, I think there are two motions.
13 One is the motion that I want you to make now, Rule 29. Do
14 you have such a motion?

15 MR. WESTLING: Your Honor, at this time, the defense
16 would move for a Rule 29 motion as to all the counts in the
17 indictment, in particular, Your Honor, for keeping it brief
18 here, I know we have limited time, I would particularly ask
19 the Court to focus on the allegations related to The Federal
20 Savings Bank. We believe there's not been a showing of
21 materiality as to those counts, that the bank -- the evidence
22 suggests that the bank did not rely on any representations
23 made by Mr. Manafort in granting those loans, and at this
24 time, it would be appropriate to dismiss those counts.

25 As to other loans, we believe there are similar

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

—U.S. v. Manafort—

2296

1 issues and I think the Court has heard the evidence. We also
2 believe there's been a failure to show the necessary
3 willfulness throughout the indictment with particular emphasis
4 on the tax and the FBAR accounts.

5 THE COURT: All right. Mr. -- who will answer it,
6 Mr. Andres?

7 MR. ANDRES: I will, Your Honor.

8 With respect to the tax charges, the Government has
9 charged Mr. Manafort in the first five counts at failing to --
10 for failing [sic] false tax returns as to his --

11 THE COURT: I don't think he moved for a Rule 29 on
12 that, or do you?

13 MR. WESTLING: I did mean to, Your Honor, as to all
14 counts.

15 THE COURT: Then you need to address it. I think
16 what he's addressing specifically that you do need to address
17 are the bank fraud counts; is that right?

18 MR. ANDRES: Okay.

19 MR. WESTLING: That's correct, Your Honor.

20 MR. ANDRES: Your Honor, just for the record, we have
21 filed the brief as to the -- as to the --

22 THE COURT: Did you file it today?

23 MR. ANDRES: Yeah, we filed it this afternoon. So
24 I'm just asking that Your Honor consider --

25 THE COURT: All right. Well, if you'd like, I'll

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

—U.S. v. Manafort—

2297

1 take a moment and go get it. But it won't surprise you to
2 learn that I don't have a phalanx of lawyers working.

3 MR. ANDRES: No, I -- Your Honor, I wasn't --

4 THE COURT: And, in fact, this came at a time when I
5 lost all my law clerks and I get brand-new ones, and they know
6 nothing and have not been involved in this case.

7 So you say you have filed something today.

8 MR. ANDRES: Yes, it addresses this specific issue.

9 THE COURT: All right. Let me go look at it.

10 MR. ANDRES: Okay.

11 THE COURT: And does it address the issue that
12 Mr. Zehnle raised?

13 MR. ANDRES: Mr. Westling raised.

14 THE COURT: Westling.

15 MR. ANDRES: The materiality issue with respect to
16 the TSFB, yes, it specifically focuses --

17 THE COURT: Yes. All right. Let me go read that.

18 MR. ANDRES: Okay.

19 THE COURT: Now, I take it, Mr. Downing, you're here
20 and seated in the No. 1 victim position because you want to
21 address the other pending motion.

22 MR. DOWNING: That's correct, Your Honor.

23 THE COURT: The sealed motion.

24 MR. DOWNING: Yes, Your Honor.

25 THE COURT: Let me have counsel at the bench

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

—U.S. v. Manafort—

2298

1 quickly, please, and then I'm going to take a minute -- just
2 for the benefit of everyone, I'm going to take a minute and
3 look at the brief that was submitted this afternoon by the
4 Government on the Rule 29 issue.

5 (A sealed bench conference was held, but not included herein.
6 Pages 20 - 23.)

7 (Open court.)

8 THE COURT: All right.

9 We will proceed as follows: I'm going to recess
10 briefly to read those briefs that were filed today, then we
11 will reconvene and I will hear argument on the sealed motion.
12 So the courtroom will be closed, but you will -- everyone in
13 the courtroom, indeed everyone in the world, will have access
14 to what is said because nothing will remain under seal, but it
15 will remain under seal for the time being. Not permanently.

16 And then after I hear that, we will reconvene at
17 9:30 tomorrow morning. And I expect -- I will know then or
18 before whether the Government -- whether the defendant intends
19 to offer any evidence.

20 MR. DOWNING: Yes, Your Honor.

21 THE COURT: And I will also be prepared to do the
22 instructions conference fairly promptly if we need to. So as
23 far as proceedings today in open court, ladies and gentlemen,
24 it's over.

25 But what we do will not be permanently under seal.

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

—U.S. v. Manafort—

2299

1 When the case is over, the seal will be lifted. And you will
2 all have an opportunity to see. Anything further right now?

3 MR. ANDRES: No, Your Honor. Thank you.

4 THE COURT: Both of the briefs were filed; is that
5 correct?

6 MR. DOWNING: Yes, we filed yesterday.

7 MR. ANDRES: Yes, Your Honor.

8 THE COURT: All right. I will go look at those now.
9 And then we'll reconvene and close the courtroom and I'll hear
10 from you in that regard. I'll also look at the Rule 29
11 motions and I may proceed on those.

12 There's a possibility, ladies and gentlemen, that if
13 I deal with another motion that it may be in open court. It's
14 only the sealed motion that I'm going to deal with without you
15 all present.

16 MR. DOWNING: Your Honor, on the Rule 29 we had
17 asked if we can have until the morning to file a brief --

18 THE COURT: That's right, you did ask, so it won't
19 be done today.

20 MR. DOWNING: Thank you.

21 THE COURT: When you submit something, I will read
22 it and then I will act on that motion and I'll do all of that
23 in open court.

24 Court stands in recess.

25 (Court recessed to the public at 5:09 p.m. Further sealed

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

U.S. v. Manafort

2300

proceedings were held, but not included herein.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

EASTERN DISTRICT OF VIRGINIA

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury Trial in the case of the **UNITED STATES OF AMERICA versus PAUL J. MANAFORT, JR.**, Criminal Action No. 1:18-CR-83, in said court on the 13th day of August, 2018.

I further certify that the foregoing 22 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this August 13, 2018.



Tonia M. Harris, RPR
Official Court Reporter